

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

JAMES SMITH, on behalf of himself and) NO.: 1:20-CV-02350
all others similarly situated, and on behalf of)
the TRIAD MANUFACTURING, INC.)
EMPLOYEE STOCK OWNERSHIP PLAN,) JUDGE: GUZMAN
Plaintiffs,)
vs.) MAG. JUDGE: KIM
GREATBANC TRUST COMPANY; THE)
BOARD OF DIRECTORS OF TRIAD)
MANUFACTURING, INC.; DAVID)
CAITO; ROBERT HARDIE; and)
MICHAEL McCORMICK,)
Defendants.)

TRIAD DEFENDANTS' MOTION TO STAY LITIGATION PENDING APPEAL

NOW COME the Defendants, Board of Directors of Triad Manufacturing, Inc., David Caito, Robert Hardie, and Michael McCormick (the “Triad Defendants”) and hereby request this Honorable Court stay this litigation, including but not limited to the Triad Defendants’ deadline to file their Answer, pending their Appeal of this Court’s decision denying the Triad Defendants’ Motion to Compel Arbitration and/or dismiss, and in support thereof state as follows:

1. On August 21, 2020, this Honorable Court denied the Triad Defendants’ Motion to Compel Arbitration and/or dismiss (the “Order”). (Dkt No. 51).
2. On September 3, 2020, the Triad Defendants’ filed a Notice of Appeal (the “Appeal”) of the Order pursuant to the Federal Arbitration Act (“FAA”) (9 U.S.C. § 16(a)(1)(C)). (Dkt. No. 55).
3. Generally, a motion to stay depends on (1) whether the stay applicant has made a strong

showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the parties interested in the proceeding; and (4) where the public interest lies.” *Carpenters Fringe Benefit Funds v. Royal Builders, Inc.*, 2008 U.S. Dist. LEXIS 94115, at *7-8 (N.D. Ill. June 6, 2008) (citing *Bradford-Scott Data Corp. v. Physician Computer Network*, 128 F.3d 504, 505 (7th Cir. 1997)).

4. However, the Seventh Circuit has held that the filing of a notice of an FAA interlocutory appeal divests the District Court of jurisdiction as long as the appeal is not frivolous. *Bradford-Scott Data Corp.*, 128 F.3d at 505 (“The filing of a notice of an appeal is an event of jurisdictional significance -- it confers jurisdiction on the court of appeals and divests the district court of its control over those aspects of the case involved in the appeal”); *see also Goplin v. Weconnect, Inc.*, 2018 U.S. Dist. LEXIS 231107, at *7-8 (W.D. Wis. Mar. 14, 2018) (entering an order to stay pending appeal of the denial of a motion to compel arbitration because “in the Seventh Circuit, a district court must stay proceedings pending the appeal of a denial of a motion to compel arbitration unless the appeal is frivolous”).
5. In this case, the Triad Defendants’ Appeal relates directly to a dispute over whether or not this case should remain in this Court or take place in arbitration. Importantly, “[a]rbitration clauses reflect the parties’ preference for non-judicial dispute resolution, which may be faster and cheaper...[t]hese benefits are eroded, and may be lost or even turned into net losses, if it is necessary to proceed in both judicial and arbitral forums, or to do this sequentially.” *Id.* at 506.
6. In the event the Seventh Circuit reverses this Court’s Order and enters an Order compelling arbitration, the Parties will have wasted a substantial amount of time and resources on

continuing litigation pending the appeal. As set forth in *Bradford*, “[t]he worst possible outcome would be to litigate the dispute, to have the court of appeals reverse and order the dispute arbitrated, to arbitrate the dispute, and finally return to court to have the award enforced....[i]mmediate appeal under § 16(a) helps to cut the loss from duplication.” *Id.*

7. Finally, the Appeal is not frivolous as the United States Court for the Ninth Circuit Court of Appeals is the only appellate court to address the novel area of the law that is the subject of the Appeal, and this Court’s Order disagrees with that decision. Furthermore, as set forth above, the result of a successful appeal would ultimately end this case in this Court and require arbitration.
8. For all of these reasons and in accord with Seventh Circuit precedent, the Triad Defendants’ respectfully request this Honorable Court stay further proceedings in this case, including but not limited to the deadline for the Triad Defendants’ Answer, pending a decision on Appeal by the United States Court of Appeals of the Seventh Circuit.
9. The Triad Defendants’ counsel has conferred with Plaintiff’s counsel who has stated they object to this motion.
10. Furthermore, The Triad Defendants’ counsel has conferred with counsel for co-defendant GreatBanc Trust Company who has no objection to this motion.

WHEREFORE, the Triad Defendants respectfully request this Honorable Court enter an Order staying further proceedings in this case pending the results of the Appeal.

Respectfully Submitted,

/s/ Matthew D. Grabell – 6312929
Matthew D. Grabell (6312929)
Tiffany D. Downs (*pro hac vice*)
FORD & HARRISON, LLP
271 – 17th Street, NW, Suite 1900
Atlanta, GA 30363

mgrabell@fordharrison.com
Telephone: (404) 888-3820
Benjamin P. Fryer
FORD & HARRISON LLP
(*admitted pro hac vice*)
NC Bar No. 39254
6000 Fairview Road, Suite 1200
Charlotte, NC 28210
bfryer@fordharrison.com
Telephone: (980) 282-1900
Facsimile: (980) 282-1949

Attorneys for Board of Directors of
Triad Manufacturing, Inc., David
Caito, Robert Hardie, and Michael
McCormick

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on today's date, September 3, 2020, he served a copy of the foregoing ***Triad Defendants' Motion to Stay Pending Appeal*** on all parties via operation of the Court's CM/ECF electronic filing system and to all parties unable to receive electronic service, at the address set forth below.

/s/ Matthew D. Grabell – 6312929

Matthew D. Grabell (6312929)
Tiffany D. Downs (*pro hac vice*)
FORD & HARRISON, LLP
271 – 17th Street, NW, Suite 1900
Atlanta, GA 30363
mgrabell@fordharrison.com
Telephone: (404) 888-3820
Benjamin P. Fryer
FORD & HARRISON LLP
(admitted pro hac vice)
NC Bar No. 39254
6000 Fairview Road, Suite 1200
Charlotte, NC 28210
bfryer@fordharrison.com
Telephone: (980) 282-1900
Facsimile: (980) 282-1949

Attorneys for Board of Directors of Triad Manufacturing, Inc., David Caito, Robert Hardie, and Michael McCormick